

	STANDARD OPERATING PROCEDURE State Form 39870(R/S-06)	Reference Number LEG-003
	Subject Civil Liability and Legal Actions Involving Employees	
	Special Instructions Replaces LEG-005 dated January 15, 2015	Effective Date May 31, 2018

I. **PURPOSE**

Establishes guidelines for Department employees to report and request assistance in matters that could result in Department or individual civil liability.

II. **POLICY**

All incidents of potential civil liability shall be reported to the Legal Division as soon as possible. The Chief Counsel, or designee, shall be notified of serious incidents when an immediate response is necessary.

III. **PROCEDURE**

A. Definitions and examples:

1. In general, civil suits against employees may allege damages under state tort law or deprivation of rights under constitutional law. Under the Tort Claims Immunity Act, IC 34-13-3 *et. seq.*, an employee's personal liability is usually limited to intentional torts. Intentional torts include, but are not limited to:

- a. Battery, e.g., wrongful physical contact;
- b. False arrest;
- c. False imprisonment;
- d. Assault, e.g., threat to inflict injury;
- e. Trespass, e.g., damage to property; and
- f. Conversion, e.g., impounding vehicles improperly.

2. A federal civil action for deprivation of Constitutional rights may be brought under Section 1983 of Title 42 of the United States Code. Furthermore, violation of Title 18, Section 242 of the United States Code by an employee may result in criminal liability when an act:

- a. Was committed under "color of law" as in a police officer acting under legal authority; and
- b. The act willfully subjects a person to deprivation of any Constitutional right.

B. Employees who, as a result of acts performed within the scope of their duties, are sued for civil damages or charged with crimes, shall report such fact immediately to the Legal Division before taking any action.

All other litigation, except for domestic relations filings that do not involve allegations of criminal conduct, whether instituted by or against an employee shall be reported, in writing, to the Legal Division without delay.

C. The Legal Division has a responsibility to limit civil liability and may be assigned to investigate situations, if warranted, involving the Department that may lead to legal action.

D. The Operations Center shall immediately notify the Chief Counsel of any:

1. Action involving the Department in which deadly force was used;
2. Vehicle crash involving any Department vehicle that resulted in serious injury or death; and
3. Action or incident which, from the very nature, suggested the likelihood of serious legal consequences to the officers involved.

E. The Legal Division will review, evaluate and determine the appropriate, necessary response to each incident.

F. Any employee who is served with any pleading or who receives a subpoena for deposition or production of evidence in matters relating to potential Department or individual liability, or employee being called as a character witness shall:

1. Contact and obtain authorization from the Legal Division before complying with any such subpoena; and
2. Forward a copy of any pleading or subpoena, with a memorandum or case report outlining the circumstances of the incident, to the Legal Division. Forwarded copies shall display a date and timestamp to identify when the originals were received by the employee.

G. To avoid accusations of partiality by the Department, employees shall not appear as witnesses in civil actions as representatives of the Department, except in response to valid process issued by the court, and except that employees may, with the approval of the Superintendent, honor subpoenas from adjoining states, provided no travel in excess of 100 miles is involved and no per diem expense results to the Department, and provided further, that if such out-of-state appearances are made during regularly scheduled duty hours, the Department shall be compensated in an amount equal to one day's salary and all expenses for each day, or portion thereof, that such employee misses regular duty because of such appearance.

H. This procedure is to be used in conjunction with all relevant Department regulations, rules, policies and procedures.